Ramsingh vs. State of Rajasthan
(S.B.C.Writ Pet.No.3665/02)

Date of Order:- 1st September,2006.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Sudesh Gupta, Advocate for the petitioner.
Mr.Rajesh Joshi, Advocate for the respondents.

Challenge in this writ petition has been made to the award passed by the learned Industrial Tribunal-cum-Labour Court, Sri Ganganagar dated 5th October, 2001. A reference was made to the Tribunal on the question whether reversion of the workman Ram Singh from the post of Civil Mistri was legal and justified and if not, what relief the workman was entitled to. The Tribunal on consideration of the material on record and the rules on the subject held that the petitioner was promoted on the post of Civil Mistri vide order dated 26.12.1994 w.e.f. 1.1.1995 and placed on probation for a period of one year. However, when the Controlling Officer did not find his services satisfactory, he was reverted back to the substantive post. Such an order was passed only because of unsatisfactory services of the petitioner.

I have heard Mr.Sudesh Gupta, learned counsel for the petitioner and Mr.Rajesh Joshi, learned counsel for the respondents and perused the record.

Mr.Sudesh Gupta, learned counsel for the petitioner has argued that the petitioner was promoted on the post of Civil Mistri by order

dated 26.12.1994 w.e.f. 1.1.1995. In this order, the period of his probation was prescribed as one year which the petitioner successfully completed on 1.1.1996 and the respondents had no authority to revert him back to the post of Civil Mistri after expiry of the period of probation. The petitioner on expiry of such period would be deemed to have been confirmed.

On the other hand, Mr.Rajesh Joshi, learned counsel for the respondents has argued that according to Rule 3.28 of the General Condition of Rajasthan State Cooperative Rules, 1994(for short "the Rules of 1994"), the petitioner was placed on probation for a period of one year on the post of Civil Mistri . Since the work of the petitioner was not found satisfactory, he has been reverted to his substantive post by order dated 4.1.1996. According to him there was no question of deemed or automatic confirmation of the petitioner because the maximum period of probation under the Rules was prescribed as two years. In these circumstances, the learned Labour Court has not committed any error in answering the reference in negative.

I have considered the arguments of both the parties and perused the record.

Whether or not the appointment/promotion of an employee made on probation would result into deemed/automatic confirmation is always dependent on the scheme of the Rules. In the present case, Rule 3.28 of the Rules of 1994 provides as under :-

"3.28 Probation:

(1) Every persons appointed to a post under the Federation, after the commencement of these rules, whether by promotion or by direct recruitment shall be on probation, on such post, for a period of one year.
(2) The appointing authority may, if it thinks fit, in the case of any employee, extend the period of probation. The total probation period shall not be more than two years.
(3) However when a person, appointed to a post, under the Federation on probation is, during his period of probation, found unsuitable for holding that post or has not completed his period of probation satisfactorily, then the appointing authority may:
(a) in the case of person appointed by promotion revert him to the post held by him/her immediately before such appointment.
(b) in the case of person appointed by direct recruitment terminate his/her services under the Federation without notice.
(4) Every person appointed to a permanent post under the Federation by promotion or by direct recruitment shall on satisfactory completion of his period of probation be eligible for substantive appointment in that post.
(5) Service of any employee appointed on probation shall be terminable forthwith without any notice before the expiry of the period of probation in the circumstances or events mentioned in rule 3.29(4)(a) + (b) of these rules."

According to clause (1) of the aforesaid Rule, every person appointed to a post under the Federation, after commencement of these rules, whether by promotion or by direct recruitment shall be on probation, on such post, for a period of one year. Sub-clause (2) provided that the appointing authority if it thinks fit in the case of any employee, extend the period of probation. The total probation period shall not be more than two years. It would thus be evident that the Management had initially placed the petitioner on probation for one year when they promoted him from the post of Civil Mistri upon making assessment of his performance and by order dated 4.1.1996 he had been reverted to the original post. Since,

outer limit for which the employee could be placed under probation is two years, the petitioner could not treat himself as confirmed employee because maximum period of probation of two years had still not expired and therefore there was no question of any deemed/automatic conformation. Even in that situation, this will have to be judged from the conduct of the parties and other relevant factors of a given case whether or not that an employee placed under probation should be deemed to have been confirmed.

In the circumstances, I do not find any error in the impugned award passed by the learned Labour Court. The writ petition is therefore dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.